

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRYAN O'KEEF KIMBLE,

Movant,

vs.

No. CV 22-00109 RB/GBW

No. CR 13-2744 RB

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER
GRANTING WITHDRAWAL AND DISMISSING CIVIL CASE

THIS MATTER is before the Court on Movant Bryan O'Keef Kimble's notice withdrawing his letter motion seeking relief under *Borden v. United States* (CV Doc. 1; CR Doc. 59.) The Court will grant the request to withdraw and dismiss civil case No. CV 22-00109 RB/GBW.

On February 9, 2022, Kimble filed his handwritten letter motion (CV Doc. 1; CR Doc. 59.)

In his letter, Kimble stated:

I am writing in regards to my compassionate release motion. I now move the Court for reduction in my sentence due to me wrongfully being charged with a (18 U.S.C. § 924(c)). I do not have three crimes of violence . . . the Supreme Court's landmark decision in *Borden v. United States* 19-5410 (S. Ct. June 10, 2021) has paved the way for people with "924(c)" and "ACCA" in which only is held to a mens reas of recklessness please read "Borden v. United States." Bordens decision means that these offenses cannot be a "violent felony" or "crime of violence." . . . I humbly ask in good faith Honorable Judge Brack that you also grant motion for reduction in sentence and vacate my 924(c) offense as well.

(CV Doc. 1 at 1; CR Doc. 59 at 1.)

Kimble's Motion appeared to challenge his conviction and sentence in CR 13-02744 RB.

(CV Doc. 1 at 1; CR Doc. 59 at 1.) Therefore, the Court entered an Order pursuant to *Castro v.*

United States, 540 U.S. 375 (2003) on March 9, 2022, notifying Kimble that, to the extent he was seeking relief under *Borden v. United States*, the Court intended to recharacterize his Motion as a first 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. (CV Doc. 4; CR Doc. 65.) The Order granted him leave to withdraw or amend the § 2255 motion within 30 days.

On April 22, 2022, Kimble then filed his letter notifying the Court that he was exercising the option to withdraw his February 9, 2022 letter motion and stating that “I do not wish to file under 28 U.S.C. § 2255 at this time.” (CV Doc. 5 at 1; CR Doc. 68 at 1.) As stated in the Court’s March 9, 2022 Order, the Court has not yet characterized and, in light of withdrawal of the motion, will not characterize, Kimble’s letter motion as a first motion under 28 U.S.C. § 2255. The Court will grant the request to withdraw and will dismiss civil proceeding No. CV 22-00109 RB/GBW. The dismissal of civil proceeding CV 22-00109 RB/GBW is without prejudice to Kimble’s pending motion for compassionate release in CR 13-02744 RB.

IT IS ORDERED that Movant Bryan O’Keef Kimble’s request to withdraw his letter motion (CV Doc. 5; CR Doc. 68) is **GRANTED** and his letter motion (CV Doc. 1; CR Doc. 59) is **WITHDRAWN**; Kimble’s letter motion (CV Doc. 1; CR Doc. 59) is **NOT CHARACTERIZED** as a first motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence; and civil case No. CV 22-00109 RB/GBW is **DISMISSED** without prejudice.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE